



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
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MAR 28 2018

Honorable Tania Vázquez Rivera  
President, Puerto Rico Environmental Quality Board and  
Director, Department of Natural and Environmental Resources  
P.O. Box 366147  
San Juan, Puerto Rico 00936

Dear Ms. Vázquez Rivera:

Thank you for the opportunity to review the Puerto Rico Environmental Quality Board's (EQB) draft solid waste management regulations. The U.S. Environmental Protection Agency (EPA) has reviewed the unofficial translation sent by EQB on December 20, 2017 addressing the comments that EPA provided on the previous draft.

The EPA appreciates the effort that you and your staff put into addressing our comments. Based on review of the latest draft of the regulations, the EPA notes three important items that require revision to meet the minimum federal requirements of 40 Code of Federal Regulations (CFR) Part 258. These include: (1) the definition of lateral expansion in the definitions section, (2) the Table 1 list of constituents in the Design Criteria, and (3) the Corporate Guarantee section of the Financial Assurance requirements.

Specifically:

1 - Rule 110, definition number 71, on page 32 of EQB's draft regulations define lateral expansion as: "The horizontal growth of an existing sanitary landfill further beyond the limits previously contemplated in the environmental document, and beyond the limits of the property. It shall also be considered as a lateral expansion, subject to the design and operating requirements set forth in this Regulation, any horizontal expansion of the dimensions of a disposal unit or cell whose design was previously approved in the construction permit issued by the Environmental Quality Board."

The use of the term "limits of the property" is problematic as it allows for a greater expansion than the Federal criteria. As such, we suggest that this definition be replaced with the following definition from 40 CFR Part 258, which is: "*Lateral expansion* means a horizontal expansion of the waste boundaries of an existing MSWLF [Municipal Solid Waste Landfill] unit."

2 - Rule 114, Design Criteria, Table 1 on page 61 omits the contaminant Benzene and its MCL of 0.005 mg/l. Please include this parameter in Table 1 of the Design Criteria in the final version of EQB's solid waste regulations.

3 - Rule 145, Financial Assurance Mechanisms, E. Corporate Guarantee, starting on page 156 of EQB's draft regulations is not completely consistent with 40 CFR Part 258. 40 CFR 258.74(g) provides for a corporate guarantee as one of the allowable financial assurance mechanisms, as does EQB's 145 E. However, in 40 CFR 258.74(g)(1), the requirements for a guarantor include the following: "The guarantor must meet the requirements for owners or operators in paragraph (e) of this section...". The requirements in 40 CFR Part 258.74(e) that are referenced above, are those that apply to a *corporate financial test*.

The draft of EQB's regulations (Rule 145, E) does not include the equivalent of a 40 CFR 258.74(e), corporate financial test section. The Puerto Rico draft regulations do include a corporate guarantor section in 145(g) but that section does not incorporate the corporate financial test requirements of 40 CFR 258.74(e).

In order to correct this issue, we recommend that EQB use one of the following two options:

A) EQB may choose to include the requirements of 40 CFR Part 258.74(e) for corporate financial tests in the Financial Assurance section of its regulations; either as a separate section or contained in PR's 145 E, Corporate Guarantee section. The corporate guarantee section must provide that a guarantor must meet the financial requirements for owners and operators set forth in 40 CFR Part 258.74(e); or

B) EQB may choose to delete 145 E, Corporate Guarantee section of its Financial Assurance requirements. Eliminating this option would make PREQB's regulations more stringent than the minimum Federal requirement in 40 CFR Part 258.

Please confirm that the required revisions and additions noted in this letter will be incorporated into EQB's final proposed regulations. To ensure consistency with the requirements for an approved MSWLF program, we request that, upon public notice, EQB submit the public noticed version of its draft solid waste regulations to EPA for review prior to promulgation of the final regulations.

We look forward to working with you and your staff to provide for the protection of human health and the environment in Puerto Rico. Please contact Dale Carpenter, Chief of the Sustainable Materials Management Section at 212-637-4110 or [carpenter.dale@epa.gov](mailto:carpenter.dale@epa.gov) if you have any comments or questions regarding this matter.

Sincerely,



John Filippelli, Director  
Clean Air and Sustainability Division

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